

the standard. The application would also include the most recent DPM monitoring results.

Section 57.5060(c)(vi) would require the mine operator to specify the actions that the operator intends to take during the extension period to minimize miner's exposures to DPM. These actions may include maintaining existing controls, conducting periodic monitoring of miner's exposures, and providing appropriate respiratory protection and requiring miners to use such respirators. MSHA does not intend that personal protective equipment be permitted during the extension as a substitute for engineering and administrative controls that can be implemented immediately. In these circumstances, MSHA would consider such controls to be feasible and would require mine operators to implement them prior to granting an extension.

Finally, the proposed rule would retain the requirement that operators certify to MSHA that one copy of the application was posted at the mine site for at least 30 days prior to the date of application, and another copy was provided to the authorized representative of miners. This record would continue to be subject to records requirements under § 57.5075 of the existing standard.

Existing § 57.5060 requires the mine operator to comply with the terms of any approved application for a special extension, and post a copy of the approved application for a special extension at the mine site for the duration of the special extension period. MSHA's proposed rule also would require operators to provide a copy of the approved application to the authorized representative of miners.

The ANPRM solicited comments on circumstances that would necessitate an extension of time to come into compliance with the PEL and the final concentration limit. Some commenters stated that there were no circumstances that would necessitate an extension of time. Various commenters stated that there should be no extensions. Some commenters also said that the Mine Act does not require a feasibility determination for each mine. Others stated that the technology is available and referenced in the 1998 *Verminderung der Emissionen von Realmaschinen im Tunnelbau* (VERT) study.

Some commenters favored granting extensions based on operators' good faith efforts to reduce DPM. One commenter said that the 31-Mine Study showed that many mines would be unable to comply with either the interim or final limit. Some commenters

said that extensions would be necessary when technological or economic feasibility precludes compliance and that granting extensions should be site-specific.

MSHA also solicited comments on the duration of the extension. Some commenters wanted one-year, renewable extensions. A few commenters stated that extensions should be granted automatically until control technology is feasible, while others felt that extensions should be granted liberally and renewed as long as the mine is making good faith efforts. Several commenters also stated that in-mine applications of control technology can differ from lab results and that manufacturers are developing new technology for EPA compliance, thus research and development for control technology on existing engines is not cost effective.

MSHA asked for comments on what actions mine operators must take to minimize DPM exposures if they are operating under an extension. Some commenters stated that a detailed compliance plan specifying how the limit would be met should be required. These same commenters said that a public hearing on granting an extension should be held at the operator's or union's request. Use of administrative controls and PPE were recommended by several commenters. Commenters also said that research on respiratory protective devices such as PAPRs (powered air purifying respirators) is needed.

MSHA agrees that applications for extension should include the actions a mine operator will take during the extension to reduce the miner's exposure level to the interim PEL or the final concentration limit such as monitoring, ordering controls, adjusting ventilation, respiratory protection, and other good faith actions of the mine operator. The circumstances under which MSHA would propose to require respiratory protection are in new § 57.5060(d).

MSHA is proposing to revise § 57.5060(c) as agreed to in the DPM settlement agreement. MSHA has further reviewed and analyzed the effect of this standard and is concerned that it would duplicate the regulatory objectives addressed under new § 57.5060(d) and the intended hierarchy of controls for the DPM rule. In the preamble to the existing rule at page 5861, MSHA stated:

Extension application. § 57.5060(c)(1) provides that if an operator of an underground metal or nonmetal mine can demonstrate that there is no combination of controls that can, due to technological

constraints, be implemented within five years to reduce the concentration of DPM to the limit, MSHA may approve an application for an extension of time to comply.

The Agency intended for the existing provision to address circumstances where mine operators would need additional time to implement a technological solution to controlling DPM in their individual mines. When MSHA promulgated the DPM rule, it intended for this provision to give flexibility to a regulatory scheme that prohibited use of administrative controls and respiratory protection.

MSHA requests comments on whether the proposed provision for the extension of time to comply with the interim PEL and the final concentration limit would be necessary, and examples of how this requirement would benefit mine operators if included in the final regulatory framework. MSHA is interested in avoiding duplication and requiring additional paperwork from the mining industry in order to resolve feasibility issues at individual mining operations. The Agency needs further input from the public on the effectiveness of proposed § 57.5070(c) and how this provision fits within the comprehensive structure of this rulemaking.

C. Section 57.5060(d)

Existing § 57.5060(d) permits miners engaged in specific activities involving inspection, maintenance, or repair activities, to work in concentrations of DPM that exceed the interim and final limits, with advance approval from the Secretary. MSHA specifies in the standard that advance approval is limited to activities conducted as follows:

(i) For inspection, maintenance or repair activities to be conducted:

(A) In areas where miners work or travel infrequently or for brief periods of time;

(B) In areas where miners otherwise work exclusively inside of enclosed and environmentally controlled cabs, booths and similar structures with filtered breathing air; or

(C) In shafts, inclines, slopes, adits, tunnels and similar workings that the operator designates as return or exhaust air courses and that miners use for access into the mine or egress from the mine;

Operators must meet the conditions set forth in the standard for protecting miners when they engage in the specified activities in order to qualify for approval of the Secretary to use respiratory protection and work practices. MSHA considers work practices a component of administrative controls.

In tandem with this requirement is existing § 57.5060(e) which prohibits